

EXHIBIT 2

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MICHAEL GAFFNEY,

Plaintiff,

New York, N.Y.

v.

18 CV 8770 (GBD) (OTW)

MUHAMMAD ALI ENTERPRISES, LLC,
et al.,

Defendants.

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Teleconference

September 30, 2020
11:30 a.m.

Before:

HON. ONA T. WANG,

Magistrate Judge

APPEARANCES

GLASER WEIL FINK HOWARD AVCHEN & SHAPIRO, LLP

Attorneys for Plaintiff

BY: ROBERT E. ALLEN

THOMAS BURKE

FERDINAND IP, LLC

Attorneys for Defendants MAE and ABG

BY: JESSICA S. RUTHERFORD

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1 information. They have only produced what they claim are
2 royalty statements that were payments that they made to
3 Mr. Gaffney for the use of the photos. They have provided zero
4 financial information that was requested.

5 THE COURT: Let's hear from Ms. Rutherford.

6 MS. RUTHERFORD: Your Honor, the information that
7 plaintiff has requested is overbroad and irrelevant to any
8 calculation of damages, even assuming liability which we do not
9 concede. So, that's why we have objected to the production of
10 the Muhammad Ali Enterprises gross revenues and any indirect
11 so-called indirect profits from it to that ABG received.
12 Moreover, there is no such indirect profits evidence. So, let
13 me go back to the first case that plaintiff cited which is on
14 *Davis v. Gap*.

15 THE COURT: Actually, Ms. Rutherford, let me stop you
16 right there. Okay. Let's take the easy one first. Gross
17 revenue of Muhammad Ali Enterprises. In order for plaintiff to
18 prove damages, they would have to calculate from gross revenue,
19 right, the amount of revenue that's attributable to use of the
20 photos at issue if liability were established, right?

21 MS. RUTHERFORD: That's true, your Honor.

22 THE COURT: Right. So is there a protective order in
23 this case?

24 MR. ALLEN: Yes, your Honor.

25 THE COURT: Okay. I'm going to order that you produce

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1 the gross revenue of Muhammad Ali Enterprises. What they are
2 going to be able to do from that is their problem, really.
3 Obviously, they're not going to get as damages the entire gross
4 revenue of MAE. That's not going to happen. It is going to be
5 up to them. They are going to have to show, the burden is
6 going to be on them to tie somehow that some portion of that
7 revenue to the use of Mr. Gaffney's photos and they are going
8 to have to make their case.

9 So, that is, in my eye, an easier one. Because
10 they'll get it and then it is going to be their problem to make
11 that damages argument.

12 I am more troubled about this concept of revenue from
13 ABG that is indirectly from exploitation of Mr. Gaffney's
14 photos, because that one seems to me a lot more like plaintiffs
15 asking defendants to do their work for them. And I don't even
16 know even, setting aside whether indirect profits even --
17 whether indirect profits is a sufficient theory of damages,
18 that just doesn't seem to be something that is fair to ask
19 defendants to figure out.

20 Why don't we stick with -- well, here's the thing. I
21 mean, Ms. Rutherford, is it fair to say that either the
22 majority or the only use of Mr. Gaffney's photos of Mr. Ali
23 would have gone through MAE anyway? In other words, is this
24 sort of indirect profits -- setting aside whether there is a
25 legal basis for this -- that discovery on that is sort of